



Guidelines for License Applicants with Criminal Convictions and/or Deferred Adjudications

These guidelines are issued by the Texas Funeral Service Commission (TFSC) pursuant to the Texas Occupations Code, § 53.025(a). These guidelines describe the process by which TFSC determines whether a criminal conviction or deferred adjudication renders an applicant an unsuitable candidate for the license, or whether a conviction or deferred adjudication warrants revocation or suspension of a license previously granted. These guidelines present the general factors that are considered in all cases, and also the reasons why particular crimes are considered to relate to each type of license issued by TFSC.

Individuals may request that TFSC review their criminal background before actually applying for a license. TFSC uses the same process for this pre-application evaluation as the process described below.

I. Agency's process

All license applications require the applicant to provide information about criminal convictions and deferred adjudications. TFSC's Licensing Division runs the criminal background check through the Department of Public Safety (DPS) on each original provisional license application, each individual renewal application, each re-instatement individual application and each reciprocal license application filed. If the application or the DPS check reveals a conviction or deferred adjudication that could be a basis for denying the license, the licensing staff will refer the matter to TFSC's Legal Division and Executive Director for further review. The entire application packet is forwarded, including the completed application form, all attachments, all related correspondence, and the report obtained from DPS.

Upon receipt of an application referral in the Legal Division, the Staff Attorney and Executive Director treat these referrals as high priority, and review the criminal conviction and deferred adjudication with reference to the applicable law and these guidelines.

If it is determined that the license **should not** be denied on the basis of the criminal conviction or deferred adjudication, then the application and related materials are immediately returned to the Licensing Division, with the appropriate approval notated on the application.

If it is determined that the license **should be denied** due to the criminal conviction or deferred adjudication, the Staff Attorney, with the assistance of the Legal Assistant, will draft a letter of proposed license denial which is then mailed to the applicant. The letter clearly identifies the conviction and deferred adjudication(s) that formed the basis of the proposed denial, cites the legal authority for the proposed denial, and advises the applicant that a hearing may be requested to challenge the proposed denial. An applicant may request a hearing, not later than the 30th day after the date of the refusal.

If an applicant requests a hearing on the proposed license denial, the request is immediately forwarded to the prosecuting attorney. The attorney schedules a hearing, and issues a Notice of Hearing to the applicant. After a hearing is conducted, the Administrative Law Judge issues a Proposal for Decision for consideration by the TFSC. After considering the Proposal for Decision, the Commission may grant the license.

For individuals who are already licensed when the agency discovers a criminal conviction or deferred adjudication, the process is essentially the same as that described above. A conviction or deferred adjudication discovered by licensing staff, an Enforcement Inspector or Investigator, or any other agency employee is referred to the Legal Division and Executive Director. If the Staff attorney and Executive Director find, after investigation, that the conviction or deferred adjudication warrants license suspension or revocation, a letter of proposed license suspension or revocation is issued to the license holder. If the license holder requests a hearing, a hearing is conducted, the Administrative Law Judge issues a

Proposal for Decision for consideration by the Commission, and the Commission ultimately decides whether the license should be suspended or revoked. A decision of the Commission may be appealed, pursuant to the remedies provided under chapter 2001 of the Government Code.

II. Responsibilities of the applicant

The applicant has the responsibility, to the extent possible, to obtain and provide to the agency the recommendations of the prosecution, law enforcement, and correctional authorities as described in Section III below.

Applicants must also provide evidence of:

- Their conduct and work activity before and after the criminal activity;
- Evidence of rehabilitative efforts while incarcerated or after release;
- Evidence of compliance with any conditions of community supervision, parole, or mandatory supervision; and
- Other evidence of fitness for licensure, including letters of recommendation.

The applicant has the further obligation to furnish proof in the form required by the agency that the applicant has:

- Maintained a record of steady employment;
- Supported the applicant's dependents;
- Maintained a record of good conduct; and
- Paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted or placed on deferred adjudication

III. General factors

In determining whether a criminal conviction or deferred adjudication should be grounds to deny a license the following factors are considered in all cases:

1. the nature and seriousness of the crime;
2. the relationship of the crime to the purposes for requiring a license to engage in the occupations of funeral directing and/or embalming;
3. the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as the person previously had been involved;
4. the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of funeral directing and/or embalming; and
5. any correlation between the elements of the crime and the duties and responsibilities of the funeral directing and/or embalming.

In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime or placed on deferred adjudication, the agency will also consider the following:

1. the extent and nature of the person's past criminal activity;
2. the age of the person when the crime was committed;
3. the amount of time that has elapsed since the person's last criminal activity;
4. the conduct and work activity of the person before and after the criminal activity;
5. evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;
6. evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and
7. other evidence of the person's fitness, including letters of recommendation from:

IV. Relation of crimes to specific licenses issued by TFSC

These guidelines reflect the most common or well-known categories of crimes, and their relation to specific license types. The vast majority of criminal convictions or deferred adjudications reviewed by the agency will fit within the categories of crimes described below. However, these guidelines are not intended to be an exclusive listing, i.e. they do not prohibit the agency from considering crimes not listed herein. After due consideration of the circumstances of the criminal act and the general factors listed above, the agency may find that a conviction or deferred adjudication not described herein renders a person unfit to hold a license.

In addition to the specific crimes listed below, multiple violations of **any** criminal statute should always be reviewed, for any license type. Multiple violations may reflect a pattern of behavior that renders the applicant unfit for the license.

1. The following crimes because those acts indicate a lack of respect for human life and dignity:
 - a. Murder
 - b. Assault
 - c. Sexual Assault
 - d. Kidnapping
 - e. Injury to a Child
 - f. Injury to an Elderly Person
 - g. Child Abuse/Neglect
 - h. Harassment
 - i. Arson
2. The following crimes because those acts indicate a lack of principles needed to practice funeral directing and/or embalming:
 - a. Robbery
 - b. Theft
 - c. Burglary
 - d. Forgery
 - e. Perjury
 - f. Bribery

- g. Tampering with a governmental record
 - h. Insurance claim fraud
- 3. The following crimes because those acts indicate a lack of fitness to practice funeral directing and/or embalming:
 - a. Delivery, possession, manufacture, or the illegal dispensing of a controlled substance, dangerous drug, or narcotic;
 - b. Multiple (more than two) convictions for driving while intoxicated or under the influence.

Summary Steps

Applicant/licensee submits application

DPS criminal background check returns with a hit

Complete application packet sent to Legal Department with ED for decision. The outcome will be from one of the following three options:

Approval

If, after review of all packet documents and possible interview with the applicant, the Legal Department and ED approve the application for licensure, the Legal Department will notify the Licensing Department of their approval decision so the Licensing Department may continue with the applicant's application for licensure. The approval will be documented in the TFSC database by the ED.

Denial

If, after review of all packet documents and possible interview with the applicant, the Legal Department and ED deny the application for licensure, the Legal Department will notify the applicant and the Licensing Department of their denial decision. The Legal Department will outline the appeal process for the applicant. The applicant will have 30 days to request a SOAH hearing, otherwise the decision will be final after the 30 day deadline. The denial will be documented in the TFSC database by the ED.

Elevate to Commission Committee

If, after review of all packet documents and possible interview with the applicant, the Legal Department and ED may decide to elevate the packet to the Commission Committee, made of two rotating Commissioners, to decide if the applicant may be granted or denied licensure. The Legal Department will notify the applicant of this decision. The ED will communicate with the Commission Committee to coordinate a date for reviewing the packet along with a possible interview with the applicant. The elevation will be documented in the TFSC database by the ED.

Approval by Commission Committee

If, after review of all packet documents and possible interview with the applicant, the Commission Committee approve the application for licensure, the Legal Department will notify the Licensing Department of the committee's approval decision so the Licensing Department may continue with the applicant's application for licensure. The approval will be documented in the TFSC database by the ED.

Denial by Commission Committee

If, after review of all packet documents and possible interview with the applicant, the Commission Committee deny the application for licensure, the Legal Department will notify the applicant and the Licensing Department of the committee's denial decision. The Legal Department will outline the appeal process for the applicant. The applicant will have 30 days to request a SOAH hearing, otherwise the decision will be final after the 30 day deadline. The denial will be documented in the TFSC database by the ED.

After SOAH Hearing

Once the SOAH hearing has been completed, the applicant will be placed on the next regularly scheduled TFSC Commission meeting. At that meeting during the discussion of the applicant's agenda item, the Commissioners who served on the earlier committee will recuse themselves from the discussion and vote on this particular action item. The remaining TFSC Commissioners will consider the PFD as presented by the SOAH judge. The full TFSC Commission will vote to approve or deny the applicant for licensure. After the decision and vote, the Legal Department will notify the applicant of the decision within 30 days of the decision.

Summary Steps

Licensing Department finds a discrepancy in the documentation provided by the applicant/licensee

Licensing Department notifies applicant/licensee and FDIC, if applicable, of the discrepancy and allows for explanation. Licensing Department will also notify Enforcement Department of discrepancy.

Licensing and Enforcement Departments will evaluate applicant's/licensee's response for clarity. If explanation is acceptable, Licensing Department will continue with the licensing process. If explanation is not acceptable, Enforcement Department will open a complaint with the TFSC listed as the Complainant. Then the complaint will be assigned to an investigator and processed through the complaint process.